TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 964.

FIRST NATIONAL BANK OF VIDETA, PLAINTIFF IN ERROR,

vs.

C. M. KEYS AND HUGH MILLS, A PARTNERSHIP UNDER THE NAME OF C. M. KEYS & COMPANY, STOCK YARDS BANK, AND WAT HAYES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

FILED APRIL 5, 1915.

(29,619)

(22,609)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 264.

FIRST NATIONAL BANK OF VINITA, PLAINTIFF IN ERROR,

vs.

C. M. KEYS AND HUGH MILLS, A PARTNERSHIP UNDER THE NAME OF C. M. KEYS & COMPANY, STOCK YARDS BANK, AND WAT MAYES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 4, 1912.

1 In the Supreme Court of the State of Oklahoma.

No. 1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,
vs.
C. M. KEYS and HUGH MILLS, Partners under the Firm Name of C. M. Keys & Co., and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Return to Writ of Error.

In obedience to the within Writ of Error I herewith transmit to the Supreme Court of the United States, a full, true and complete transcript of the record and all proceedings concerning the same, in the above entitled cause, except the case made, a copy of which is incorporated in the appeal in case No. 1947, First National Bank of Claremore, Plaintiff in error, vs. C. M. Keys and Hugh Mills, a partnership under the firm name of C. M. Keys & Company, and Stock Yards Bank, a corporation, and Wat Mayes, Defendants in error, and is omitted from the transcript in this case at the request of attorney for plaintiff in error.

In witness whereof, I hereto set my hand and affix the seal of said court, at Oklahoma City, this 10th day of March, 1911.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

2 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to C. M. Keys, Hugh Mills, a partnership under the name of C. M. Keys & Company, Stock Yards Bank, a corporation, and Wat Mayes, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C. within thirty (30) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Oklahoma, wherein First National Bank of Vinita is plaintiff in error and you are defendants in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Chief Justice of the Supreme Court of the State of Oklahoma this 10th day of February 1911.

JOHN B. TURNER,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk of the Supreme Court of the State of Oklahoma,

By JESSIE PARDOE, *Deputy.*

Service of this Citation is hereby accepted this Feb'y 21, 1911.

ROBERT F. BLAIR,
Att'y for C. M. Keys & Co., Stock Yards Bank.

I, the undersigned, Wat Mayes, do hereby acknowledge service of the within and foregoing citation upon me, in Mayes County, Oklahoma, this the 20th day of February, 1911.

WAT MAYES.

Witnesses:
H. A. KUHN.
HARVE LANGLEY.

3 [Endorsed:] #1948. In the Supreme Court of the United States. First National Bank of Vinita, Plaintiff in Error, vs. C. M. Keys, Hugh Mills, et al., Defendants in Error. Citation. Filed Mar. 2, 1911. W. H. L. Campbell, Clerk. W. H. Kornegay, Att'y.

4 In the Supreme Court of the State of Oklahoma.

No. 1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,
vs.
C. M. KEYS & HUGH MILLS, Partners of the Name of C. M. Keys & Company, and Stock Yards Bank, a Corporation, Defendants in Error.

Application for Allowance of Writ of Error and the Fixing of Amount of Supersedeas Bond.

The First National Bank of Vinita, represents that on the 10th day of January, 1911, the Supreme Court of the State of Oklahoma, which is the highest Court of the State of Oklahoma, in which a decision in this suit can be had, entered a final judgment and filed an opinion, dismissing the proceedings in error in this cause from the judgment of the District Court of Craig County, Oklahoma, adjudging that the plaintiff in error was not entitled to any of the funds

derived from the sale of the cattle attached in the cause, and the ground for dismissal was that "the decision of this court when this case was before it on a former appeal determines every question of law which is now presented by counsel for plaintiff in error,
5 and therefore there is nothing for this court to determine, and the petition in error ought to be dismissed.

That this suit was commenced in the United States Court, in and for the Indian Territory, Northern District thereof, on the 20th day of July, 1905, and the proceedings in said court resulted in a judgment for plaintiff in error against Wat Mayes, and in said suit there was an intervention by these plaintiffs in error, seeking to recover the proceeds of certain cattle attached in said suit, and in said suit C. M. Keys & Hugh Mills partners under the name of C. M. Keys & Company, and Stock Yards Bank intervened and sought to apply to their debt the entire proceeds of the cattle attached, and the suit and intervention proceeds to judgment, in the United States Court, Indian Territory, Northern District, to the effect that this plaintiff in error was entitled to have its claim against Wat Mayes to the amount of $4,144.42 paid out of the proceeds of the sale of the cattle adjudged, and denying the application of C. M. Keys and Company and Stock Yards Bank to have the said fund set aside to satisfy their claim to the amount of $15,808.69. That an appeal was taken from said judgment to the United States Court of Appeals in the Indian Territory by C. M. Keys & Company and Stock Yards Bank, and said appeal was pending at the time of the admission of the State of Oklahoma into the union, and the Supreme Court of said state assumed jurisdiction of the same, and said Supreme Court on the 10th day of September, 1908, filed an opinion reversing and modifying the said judgment, and on the 9th day of December, 1909, after an opinion on re-hearing, affirmed its former opinion, and on the 9th day of December, 1909, caused to be issued a mandate to the District Court of Craig County, Oklahoma, commanding the said District Court of Craig County "to take
6 such further proceedings herein as shall accord with said opinion of the Supreme Court and right and justice."

That in the proceedings had in the United States Court, in the Indian Territory, and in the Supreme Court of the State of Oklahoma, and in the District Court of Craig County, Oklahoma, this plaintiff in error specially claimed a title, and a right under the constitution, and the Statutes of the United States, and it claimed a right, a title, a privilege and an immunity under an authority exercised under the United States, and the decision of the Supreme Court of the State of Oklahoma, and the District Court of Craig County, Oklahoma, is against such title, right, privilege and immunity so specially set up and claimed by this plaintiff in error, under said Constitution, Statutes and authority, and in said suit the validity of the Statute, of the United States, and the validity of the authority exercised under the United States, was drawn in question, and the decision of the Supreme Court of the State of Oklahoma, and of the District Court of Craig County, Oklahoma, was against their validity, and the plaintiff in error represents and avers that in the said judg-

ment of the Supreme Court of the State of Oklahoma, as well as in the judgment of the District Court of the County of Craig State of Oklahoma, there were manifest errors to the prejudice of this plaintiff in error, and the plaintiff in error, to the end that further and complete justice be done, prays for an order allowing it to prosecute a writ of error to the Honorable Supreme Court of the United States, under and in accordance with the laws of the United States in that behalf made and provided, and also that an order be
7 made fixing the amount of security which it shall make and furnish upon said writ of error, by way of supersedeas and cost bond, and it further states that there is herewith presented its assignment of errors alleged to have been committed by said Court, and intended to be urged in the prosecution by it of said suit in error, and prays that the judgment of the Supreme Court of the State of Oklahoma, and of the District Court of Craig County, Oklahoma, be reversed.

FIRST NATIONAL BANK OF VINITA,
By W. H. KORNEGAY, *Attorney.*

Let a writ of error issue in the above cause, and the cost and supersedeas bond is fixed at $2000.00, and it is further ordered that the mandate to the lower court be withheld for twenty days to enable the plaintiff in error to prepare and tender its bond for approval.

This the 23rd day of January, 1911.

JOHN B. TURNER,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL, *Clerk,*
By JESSIE PARDOE, *Deputy.*

Filed Jan. 23, 1911. W. H. L. Campbell, Clerk.

8 [Endorsed:] Case No. 1948. First National Bank of Vinita, Plaintiff in Error, vs. C. M. Keys & Hugh Mills, partners of the name of C. M. Keys & Company, and Stock Yards Bank, a Corporation, Defendants in Error. Application for allowance of writ of error and fixing of amount of supersedeas bond. Assignment of Errors. Filed Jan. 23, 1911. W. H. L. Campbell, Clerk. W. H. Korneygay, Att'y.

9 In the Supreme Court of the State of Oklahoma.

No. 1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,

vs.

C. M. KEYS, HUGH MILLS, a Partnership of the Name of C. M. Keys & Company, and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Assignment of Errors.

The plaintiff in error, First National Bank of Vinita, makes the following assignment of errors upon which it will rely upon its prosecution of the writ of error to the Supreme Court of the United States, in the above entitled cause, from the judgment rendered by the Supreme Court of the State of Oklahoma, on the 10th day of January, 1911, affirming the judgment of the District Court of Craig County, Oklahoma, and the following assignment of errors alleged to have been committed by the District Court of Craig County, Oklahoma, and the following assignment of errors alleged to have been committed by the Supreme Court of the State of Oklahoma, upon the first appeal in this cause, and it says:

I.

That the Supreme Court of Oklahoma erred in dismissing the petition in error prosecuted by it from the judgment of the District Court of Craig County, Oklahoma.

10 II.

The Supreme Court of the State of Oklahoma erred in holding that all the questions presented by the second appeal were disposed of upon the first appeal.

III.

The District Court of Craig County, Oklahoma, erred in rendering judgment against the plaintiff in error, and the Supreme Court of Oklahoma erred in dismissing the proceedings in error instituted by the plaintiff in error to the judgment of the District Court of Craig County, Oklahoma.

IV.

The District Court of Craig County, Oklahoma, erred in refusing to allow the plaintiff in error to amend its pleadings, and the Supreme Court of the State of Oklahoma, erred in dismissing the proceedings in error to review the judgment.

V.

The District Court of Craig County, Oklahoma, erred in refusing to allow the plaintiff in error to file an amended answer to the inter

plea of the defendants in error, and the Supreme Court of the State of Oklahoma, erred in refusing to reverse the order of the District Court of Craig County, Oklahoma.

VI.

The District Court of Craig County, Oklahoma, erred in holding that the claims of the defendants in error to the cattle fund were superior to the claim of the plaintiff in error, and the Supreme Court of the State of Oklahoma, erred in refusing to disturb the action of the District Court of Craig County, Oklahoma.

VII.

The District Court of Craig County, Oklahoma, erred in undertaking to disturb the action of the United States Court, in the Indian Territory, Northern District, awarding to this plain-
11 tiff in error payment out of the cattle fund of the amount due it from the defendant, Wat Mayes, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court of Craig County, Oklahoma.

VIII.

The District Court of Craig County, Oklahoma, erred in rendering the judgment it did upon the findings of fact that were made by the United States Court in the Indian Territory, Northern District, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

IX.

The District Court of the County of Craig, State of Oklahoma, erred in rendering judgment without making findings of fact, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

X.

The District Court of Craig County, Oklahoma, erred in not segregating the cattle fund from the lot fund, and in not making separate distribution of the respective funds, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XI.

The District Court of Craig County, Oklahoma, erred in not finding the amount shat it should repay and to whom, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XII.

The District Court of Craig County erred in not finding
12 specifically the amount of the costs that should be taxed to the various parties in the case, and the Supreme Court of the

State of Oklahoma erred in refusing to disturb the action of the District Court.

XIII.

The District Court of Craig County, Oklahoma, erred in exhausting the cattle fund by ordering that it should be paid to C. M. Keys & Company and Stock Yards Bank, to the detriment of this plaintiff in error, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XIV.

The District Court of Craig County, Oklahoma, erred in rendering judgment without a trial, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XV.

The District Court of Craig County, Oklahoma, erred in holding that the mortgage relied upon by the defendants in error was duly of record under the laws of the United States, and under the laws of the United States was superior to the mortgage of the plaintiff, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XVI.

The District Court of Craig County, Oklahoma, erred in rendering judgment against the plaintiff in error.

XVII.

The Supreme Court of the State of Oklahoma erred in taking jurisdiction of the original appeal.

13

XVIII.

The Supreme Court of the State of Oklahoma erred in modifying the judgment of the United States Court of the Indian Territory, Northern District, on the first appeal.

XXII.

The Supreme Court of the State of Oklahoma erred on the first appeal, in holding that the evidence did not warrant the finding that the mortgage relied upon by C. M. Keys & Company, and Stock Yards Bank had become fraudulent and void as against other lien claimants and attaching creditors.

XXIII.

The Supreme Court of the State of Oklahoma erred on the first appeal, in holding that it was not necessary, after the division of the Northern District of the Indian Territory into the Northern District

and the Western District, to have the C. M. Keys and Company and Stock Yards mortgage placed of record at Vinita.

XXIV.

The Supreme Court of the State of Oklahoma on the first appeal erred in holding that it was not necessary for C. M. Keys & Company and Stock Yards Bank to have their mortgage indexed at Pryor Creek, after the making of the recording districts in the Indian Territory.

XXV.

The Supreme Court of the State of Oklahoma on the first appeal ered in holding that it was not necessary for the mortgagee to take possession of the property, and was also not necessary for the mortgagee to have the mortgages put of record at Vinita and also at Pryor Creek.

XXVI.

The Supreme Court of the State of Oklahoma erred on the
14 first appeal in holding that it was admitted that the *that the* plaintiff in error had actual knowledge of the existence of the chattel mortgage to C. M. Keys & Company and Stock Yards Bank.

XXVII.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that the rule of law with reference to real property records was the same as in case of personal property.

XXVIII.

The Supreme Court of the State of Oklahoma on the first appeal — in holding that it was not necessary for the mortgagee, after the division of the districts, to pay the fees of indexing or recording the mortgages in the new Districts, where the property was located and the mortgagors resided.

XXIX.

The Supreme Court of the State of Oklahoma erred on first appeal, in holdin- that it was the duty of the Clerk of the United States Court of Indian Territory to transfer to the indexes at other places the mortgages that had theretofore been recorded in his office, without request upon the mortgagees and without payment of the fees.

XXX.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that a mortgage once recorded was notice to all persons of the existence of such mortgage.

XXXI.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that the filing of the mortgage henceforth gave notice to everybody of its existence, notwithstanding the divisions of the Districts and the change of *of* the places of recording.

XXXII.

The Supreme Court of the State of Oklahoma on the first appeal erred in holding that the Clerk of the United States Court had not urged as an excuse for his failure to record in other districts or to transfer to the indexes in other districts, the mortgage of C. M. Keys & Company, and Stock Yards Bank, his inability so to do, but had urged the want of an appropriation for it.

XXXIII.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that there was no question of actual fraud in the case, and that the Supreme Court of Oklahoma erred in holding that it was not claimed that there was any fraud in the case.

XXXIV.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that C. M. Keys & Company and Stock Yards Bank had done all that was necessary to keep their mortgages alive, as required by laws of the United States relating to recording of mortgages.

XXXV.

The Supreme Court of the State of Oklahoma erred in the first appeal in holding that the claim of C. M. Keys & Company and Stock Yards Bank was superior to the claim of the plaintiffs in error.

XXXVI.

The Supreme Court of the State of Oklahoma erred on the first appeal in modifying the judgment.

XXXVII.

The Supreme Court of the State of Oklahoma erred on re-hearing of the first appeal in holding that the acknowledgment upon the C. M. Keys & Company and Stock Yards Bank mortgage was in accordance with the laws of the United States.

XXXVIII.

The Supreme Court of the State of Oklahoma erred in holding upon the re-hearing of the first appeal, that there was no fraud, either actual or by operation of law, in the method of dealing with the mortgaged property allowed by C. M. Keys & Company and Stock Yards Bank.

XXXIX.

The Supreme Court of the State of Oklahoma erred in holding that there was no evidence to support the finding of the United States Court in Indian Territory, Northern District, to the effect that there was fraud in the method of handling the mortgaged property, such as to invalidate the C. M. Keys & Company and Stock Yards Bank mortgage.

XL.

The Supreme Court of the State of Oklahoma erred in holding that the evidence did not show that any of the creditors of Wat Mayes were prejudiced in any way by the dealings of Wat Mayes with C. M. Keys & Company or their assignees, Stock Yards Bank.

17 XLI.

The Supreme Court of the State of Oklahoma erred in holding that the charge of fraud by the defendants in error was without foundation.

XLII.

The Supreme Court of the State of Oklahoma erred in refusing to render a judgment, upon the reversal of the case, providing for the distribution of the funds derived from the sale of the lots, and the funds derived from the sale of the cattle, and erred in refusing to give instructions — the Court below what to do upon this matter.

The Plaintiff in Error says that all things complained of in the assignment of error took place over its objection and exception, and to its damage, and against its rights as given by the laws of the United States.

Wherefore, the plaintiff in error prays that the judgment of the Supreme Court of the State of Oklahoma dismissing its proceedings in error to the District Court of Craig County, Oklahoma, be reversed; that the judgment of the District Court of Craig County, Oklahoma be reversed; that the judgment of the Supreme Court of the State of Oklahoma upon the first appeal by C. M. Keys & Company and Stock Yards Bank from the judgment of the United States Court, of Indian Territory, Northern District be reversed; and, that the judgment of the United States Court in the Indian Territory, Northern District, be, in all things affirmed, and that proper instructions be given to the lower court for carrying out the judgment of this court.

FIRST NATIONAL BANK OF VINITA,
Plaintiff in Error,

By W. H. KORNEGAY, *Attorney.*

18 [Endorsed:] Case No. 1948. First National Bank of Vinita, Plaintiff in Error, vs. C. M. Keys, Hugh Mills, a partnership of the name of C. M. Keys & Company, and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error. Assignment of Errors. Filed Jan. 23, 1911. W. H. L. Campbell, Clerk. W. H. Korneygay, Att'y.

19 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justice of the Supreme Court of the State of Oklahoma, Greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Oklahoma before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between First National Bank of Vinita, plaintiff in error, and C. M. Keys, Hugh Mills, a partnership under the name of C. M. Keys & Company, and Stock Yards Bank, a corporation, and Wat Mayes, defendants in error, wherein rights, privileges and immunities are claimed under the Constitution and statutes of the United States, and under authority exercised under the United States, and the decision was against the rights, privileges and immunities specially set up or claimed under such Constitution, statutes and authority, a manifest error has happened to the great damage of the said First National Bank of Vinita, as by its complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you may have the same at Washington within thirty days from the date hereof in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

20 Witness The Honorable Edward Douglas White, the Chief Justice of the Supreme Court of the United States, the 13th day of February in the year of our Lord One Thousand Nine Hundred and Eleven.

[The Seal of the Circuit Court of the United States, Western District of Oklahoma.]

HARRY L. FINLEY,
Clerk of the Circuit Court of the United States for the Western District of Oklahoma.

Allowed by

[Seal Supreme Court, State of Oklahoma.]

JOHN B. TURNER,
Chief Justice of the Supreme Court of the State of Oklahoma.

[Endorsed:] Filed Feb. 14, 1911. W. H. L. Campbell, Clerk.

21 In the Supreme Court of the State of Oklahoma.

No. 1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,

vs.

C. M. KEYS, HUGH MILLS, a Partnership under the Name of C. M. Keys & Company, and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Know all men by these presents: That we, First National Bank of Vinita, as principal, and Oliver Bagby of Vinita, Oklahoma, and John S. Thomason, of Vinita, Oklahoma, as sureties, are held and firmly bound unto the above named C. M. Keys, Hugh Mills, a partnership under the name of C. M. Keys & Company, and Stock Yards Bank, a corporation and Wat Mayes, in the sum of Two Thousand Dollars ($2000.00), to be paid to them and for the payment of which, well and truly to be made, we bind ourselves and each of us and each of ours heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 2 day of Feb. in the year of our Lord One Thousand Nine Hundred and Eleven.

Whereas, the above named First National Bank of Vinita, plaintiff in error, seeks to prosecute its writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Oklahoma.

Now, therefore, The condition of this obligation is such that if the above named plaintiff in error shall prosecute its writ of error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to

22 be void; otherwise, to remain in full force and virtue.

FIRST NATIONAL BANK OF VINITA, OKLAHOMA,

[SEAL.] By CHAS. W. COLLINS, *Cashier.*

OLIVER BAGBY.

JOHN S. THOMASON.

Approved this the 10th day of February 1911.

JOHN B. TURNER,

Chief Justice of Supreme Court of State of Oklahoma.

STATE OF OKLAHOMA,
County of Craig, ss:

Oliver Bagby, one of the sureties in the foregoing bond, being duly sworn, says, that he is a resident and freeholder of the State of Oklahoma, and resides in Craig County, and that he is worth, above all just debts and liabilities in property not by law exempt from execution in the State of Oklahoma, the sum of $2000.00.

OLIVER BAGBY.

Subscribed and sworn to before me this 2nd day of Feb. 1911.

[SEAL.] BERTHA M. YOUNG,
Notary Public.

My commission expires Feb. 10, 1913.

STATE OF OKLAHOMA,
County of Craig, ss:

John S. Thomason, one of the sureties in the foregoing bond, being duly sworn, says, that he is a resident and freeholder of the State of Oklahoma and resides in Craig County, and that he is worth, above all just debts and liabilities in property not by law exempt from execution in the State of Oklahoma, the sum of $2000.00.

JOHN S. THOMASON.

Subscribed and sworn to before me this 2nd day of Feb. 1911.

[SEAL.] BERTHA M. YOUNG,
Notary Public.

My commission expires February 10, 1913.

[Endorsed:] #1948. In the Supreme Court of the State of Oklahoma. First National Bank of Vinita, Plaintiff in Error, v. C. M. Keys, Hugh Mills, a partnership under the name of C. M. Keys & Company, and Stock Yards Bank, a corporation, and Wat Mayes, Defendants in error. Bond. Filed Feb. 11, 1911. W. H. L. Campbell, Clerk. W. H. Kornegay, Att'y.

23 In the Supreme Court of the State of Oklahoma.

No. 1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,
vs.
C. M. KEYS and HUGH MILLS, Partners under the Name of C. M. Keys & Co., and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Petition in Error of First National Bank of Vinita.

The plaintiff in error represents and shows to the Court that in a certain suit wherein First National Bank of Claremore was plaintiff and Wat Mayes was defendant, brought in the United States Court in the Indian Territory, Northern District, at Vinta, on the 20th day of July, 1905, and numbered 2327, certain cattle were attached upon which the plaintiff in error had a duly recorded mortgage; that in said suit this plaintiff in error intervened, and in said suit C. M. Keys and Hugh Mills, partners under the name of C. M. Keys & Co., and Stock Yards Bank intervened, claiming the attached property under a mortgage; that various other parties intervened and in said suit it was order- that certain lots on which the plaintiff

in error held a mortgage should be sold and the proceeds distributed, and the cause was placed upon the equity docket and finally resulted in a judgment ordering the mortgaged property sold and the proceeds distributed, and that there was sufficient of the proceeds to pay the plaintiff in error in full its debt, amounting to $4192.08, and it did receive the same under said judgment. That an appeal was taken from the judgment in the cause to the United States Court of Appeals in the Indian Territory, and on the admission of the
24 State of Oklahoma into the Union the Supreme Court of the State took jurisdiction of said appeal, and that thereafter said Court rendered an opinion reversing the action of the United States Court in the Indian Territory, Northern District, and remanding the cause to the District Court of Craig County, Oklahoma. That after the mandate came down this plaintiff in error, in accordance with said opinion, made application to the District Court of Craig County, Oklahoma, *Oklahoma*, for leave to file an amended answer to the interplea of C. M. Keys & Co. and Stock Yards Bank and did tender an answer therewith on the 10th day of March, 1910, and that thereafter on the second day of April, 1910, the Court refused to allow it to file an amended answer or to allow it to file any pleadings in the cause, and that thereafter on said day this plaintiff in error objected to the Court's making any orders disturbing the judgment of the United States Court in the Indian Territory, Northern District, and said Court, over its objection and exception, proceeded so to do and proceeded to order that the fund derived from the sale of the cattle be paid to C. M. Keys & Co. and to Stock Yards Bank, and by so doing did exhaust the entire cattle fund, on which this plaintiff in error held a lien, so that this plaintiff in error would receive nothing; all of which things happened to the detriment of this plaintiff in error.

And this plaintiff in error prays that the action of the District Court of Craig County, Oklahoma, be in all things reversed, and that the action of the United States Court in the Indian Territory, Northern District, be in all things affirmed; and it makes the following assignment of errors:

I.

The District Court of Craig County, Oklahoma, erred in refusing to allow it to file an amended answer to the interplea of the defendants in error.

25 II.

The District Court of Craig County, Oklahoma, erred in holding that the claims of the defendants in error to the cattle fund were superior to the claim of the plaintiff in error.

III.

The District Court of Craig County, Oklahoma, erred in undertaking to disturb the action of the United States Court in the Indian Territory, Northern District, awarding to this plaintiff in error payment out of the cattle fund of the amount due it from the defendant Wat Mayes.

IV.

The District Court of Craig County, Oklahoma, erred in rendering the judgment it did render upon the findings of fact that were made by the United States Court in the Indian Territory, Northern District.

V.

The District Court of Craig County, Oklahoma, erred in rendering judgment without making findings of fact.

VI.

The District Court of Craig County, Owlahoma, erred in not segregating the cattle fund from the lot fund and making separate distribution of the respective funds.

VII.

The District Court of Craig County, Oklahoma, erred in not finding the amount that should be repaid, and to whom, by this plaintiff in error.

VIII.

The District Court of Craig County, Oklahoma, erred in not finding specifically the amount of costs that were to be taxed to the various parties in the case.

26

IX.

The District Court of Craig County, Oklahoma, erred in exhausting the cattle fund by ordering that it should be paid to C. M. Keys & Co. and Stock Yards Bank, to the detriment of this plaintiff in error.

X.

The District Court of Craig County, Oklahoma, erred in refusing to allow this plaintiff in error a trial.

XI.

The District Court of Craig County, Oklahoma, erred in rendering judgment without a trial.

XII.

The District Court of Craig County, Oklahoma, erred in holding that the mortgage relied upon by defendants in error was duly of record under the laws of the United States, and under the laws of the United States was superior to the mortgage of the plaintiff in error.

That there is filed herewith the case-made showing the matters and things complained of.

FIRST NATIONAL BANK OF CLAREMORE,
By W. H. KORNEGAY, *Attorney.*

(Filed Aug. 26, 1910, W. H. L. Campbell, Clerk.)

27 In the Supreme Court of Oklahoma.

No. 1947.

FIRST NATIONAL BANK OF CLAREMORE, Plaintiff in Error,
vs.
C. M. KEYS et al., Defendants in Error.

No. 1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,
vs.
C. M. KEYS et al., Defendants in Error.

Motion by Defendants in Error to Dismiss Appeal by C. M. Keys & Company and Stock Yards Bank.

And now come defendants in error, C. M. Keys & Company and Stock Yards Bank, and appear herein specially for the purpose of this motion only, and respectfully show to the court:

1.

That there is a defect in the parties, plaintiffs in error.

2.

That there is a defect in the parties, defendants in error.

3.

That plaintiffs in error have failed to have summons in error served upon these defendants in error as required by law.

4.

That plaintiffs in error have failed to give bond conditioned as required by law.

5.

That plaintiffs in error have failed to comply with Rule VII of this court, and prepare and serve upon counsel for opposite parties their brief.

28 6.

The petition in error is filed herein for the purpose of delay only and is therefore a fraud upon the jurisdiction of this court.

7.

That the decree entered in this case by the District Court of Craig County conforms in every particular to the mandate of this court.

8.

That the decision of this court when this case was before it on appeal judicially determines every question which is now presented by the petition in error filed herein; and the District Court of Craig County, Oklahoma, entered a decree in this case in accordance with the said decision of this court, and therefore all the questions which are now raised upon this appeal have been judicially determined by a decision of this court, as is shown by report of said decision in the case of C. M. Keys & Company vs. First National Bank of Claremore, et al., 104 Pac., 346-353.

Wherefore, These defendants in error move the court to dismiss the petitions in error filed herein.

And in duty bound these plaintiffs in error will ever pray.

ROBERT F. BLAIR,
Attorney for said Defendants in Error.

Endorsed: Nos. 1947 and 1948. In the Supreme Court of Oklahoma. First National Bank of Claremore, Plaintiff in Error, vs. C. M. Keys et al., Defendants in Error. First National Bank of Vinita, Plaintiffs in Error, vs. C. M. Keys et al., Defendants in Error. Motion by Defendants in Error, C. M. Keys & Co. and Stock Yards Bank to dismiss appeal. (Filed Oct. 7, 1910. W. H. L. Campbell, Clerk.)

29 And thereafter, to-wit: on the 10th day of November 1910, in the Supreme Court of Oklahoma, the following proceedings were had, in said cause:

Supreme Court, September Term, 1910, November 10th, 1910, Twenty-third Judicial Day.

#1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,
vs.
C. M. KEYS et al., Defendants in Error.

And now on this day it is ordered by the court that the motion of defendants in error herein for leave to argue motion to dismiss orally, be, and the same is hereby denied.

30 And thereafter, to-wit: on the 16th day of November 1910, in the Supreme Court of Oklahoma, the following proceedings were had, in said cause:

Supreme Court, November Term, 1910, November 16th, 1910, Third Judicial Day.

#1948.

First National Bank of Vinita, Plaintiff in Error,
vs.
C. M. Keys et al., Defendants in Error.

And now on this day it is ordered by the court that plaintiff in error be allowed to file response to motion of defendants in error to dismiss.

30*a* In the Supreme Court of the State of Oklahoma.

No. 1947.

First National Bank of Claremore, Plaintiff in Error,
vs.
C. M. Keys et al., Defendants in Error.

No. 1948.

First National Bank of Vinita, Plaintiff in Error,
vs.
C. M. Keys et al., Defendants in Error.

Response to Application to Dismiss Appeals.

The First National Bank of Claremore and the First National Bank of Vinita, respectively, say:

I.

That no defect in the parties plaintiff in error exists, and no defect of parties plaintff in error has been pointed out by the defendants in error

II.

That no defect in parties defendant in error exists and no defect has been pointed out by the defendants in error.

III.

That the plaintiffs in error have respectively had served upon the attorney of the defendants in error as shown by the record in the Court below, to-wit: Robert E. Blair, a summons in error.

IV.

That the plaintiffs in error have given bond as required by law which is on file in the Court below.

V.

That the plaintiffs in error have respectively served their briefs on the attorney of the defendants in error as shown by the record in this cause.

30*b*

VI.

That the respective petitions in error are filed for the purpose of obtaining the judgment of this Court upon the points raised therein.

VII.

That the decree entered in this cause by the District Court of Craig County does not conform to the judgment of this Court.

VIII.

That the decision of this Court when the case was before it did not judicially determine every question now presented by the petitions in error, and the judgment of this Court was not final and this Court refused to make it final.

IX.

That under the decisions of the Federal Supreme Court, and among others the decision of said Court in the case of Hanrick v. Patrick, reported in Book 30 of the Lawyers' Co-Operative Publishing Company's Edition at page 396, and in the case of Gilfillan v. McKee, reported in Book 40 Lawyers' Co-Operative Publishing Company's Edition at page 161, the proper plaintiffs in error are made in this case and the proper defendants in error are made in this case.

Wherefore, the plaintiffs in error ask that the motion of the defendants in error be not allowed.

Respectfully submitted,

W. H. KORNEGAY,
Attorney for First National Bank of Claremore, and First National Bank of Vinita.

Filed Nov. 16, 1910. W. H. L. Campbell, Clerk.

31 And thereafter, to-wit: on the 10th day of January 1911, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, January Term, 1911, January 10th, 1911, First Judicial Day.

#1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,
vs.
C. M. KEYS et al., Defendants in Error.

And now this cause comes on for final decision and determination by the court upon the record and motion to dismiss filed herein.

And the court having duly considered the same and being fully advised in the premises, finds: That the petition in error should be dismissed.

It is therefore ordered and adjudged by the court, that the petition in error herein, be, and the same is hereby dismissed.

Opinion Per Curiam.

32 In the Supreme Court of the State of Oklahoma.

(Filed 10th Day of January, 1911.)

No. 1947.

FIRST NATIONAL BANK OF CLAREMORE, Plaintiff in Error,
vs.
C. M. KEYS & COMPANY et al., Defendants in Error.

No. 1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,
vs.
C. M. KEYS & COMPANY et al., Defendants in Error.

No. 1949.

CITIZENS BANK OF PRYOR, Plaintiff in Error,
vs.
C. M. KEYS & COMPANY et al., Defendants in Error.

No. 1950.

J. C. HOGAN, Plaintiff in Error,
vs.
C. M. KEYS & COMPANY et al., Defendants in Error.

(Filed January 10, 1911.)

If, upon a cause being remanded with directions to enter judgment in accordance with the opinion of the supreme court, the court below enters judgment in substantial conformity with the directions of the appellate court, its action will not be disturbed on a second proceeding in error.

(Syllabus by the Court.)

Error from the District Court of Craig County.

Before T. L. Brown, Trial Judge. Dismissed.

W. H. Kornegay, and J. Howard Langley, attorneys for plaintiffs in error.

W. P. Thompson, attorney for intervenor, Vinita National Bank; Robert F. Blair, attorney for the defendants in error, C. M. Keys & Co.

33 *Per Curiam:*

The above entitled cases were before this court in a former proceeding in error and the opinion wherein the facts are fully stated is reported in 22 Okla. 174. After the mandate went down the First National Bank of Claremore and the First National Bank of Vinita sought to amend their pleadings and retry the issues involved as though the cases had been reversed and remanded for a new trial. The Court refused to allow any amendments, and entered judgment in accordance with what it understood the mandate of the supreme court directed. To reverse this action of the court below this proceeding in error was commenced.

The question now before us arises upon a motion to dismiss the petition in error upon the ground, among others, that, "The decision of this court when this case was before it on a former appeal, determines every question of law which is now presented by counsel for plaintiff in error, and therefore there is nothing for this court to determine and the petition in error ought to be dismissed." This motion must be sustained. An examination of the record discloses that after the case was remanded, the court below entered judgment in substantial conformity with the mandate of the supreme court. It has been held by this court that if upon a cause being remanded for a new trial, the court below has proceeded in substantial conformity to the directions of the appellate court, its actions will not be questioned on a second appeal. O. C. Elec. Gas. & Power Co., et al., v. Baumhoff, 21 Okla. 503; C. R. I. & P. Ry. Co. v. Broe, 23 Okla. 396; State Bank of Waterloo, Ill. v. City Nat. Bank of Kansas City, Mo., 110 Pac. 910. The petition in error is dismissed.

34 And thereafter, to-wit: on the 24th day of January, 1911, in the Supreme Court of Oklahoma, the following proceedings were had, to-wit:

Supreme Court, January Term, 1911, January 24th, 1911, Fourth Judicial Day.

#1948.

First National Bank of Vinita, Plaintiff in Error,

vs.

C. M. Keys et al., Defendants in Error.

And now on this day it is ordered by the court that the mandate of this court in the above entitled cause, be, and the same is hereby stayed.

35 In the Supreme Court of the State of Oklahoma.

No. 1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,

vs.

C. M. KEYS and HUGH MILLS, Partners under the Firm Name of C. M. Keys & Co., and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Certificate of Clerk.

I, W. H. L. Campbell, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the within and foregoing 34 pages, numbered from 1 to 34, both inclusive, are a full, true and complete transcript of the record and all proceedings in the above entitled cause, except the case made a copy of which is incorporated in the appeal in case No. 1947, First National Bank of Claremore, Plaintiff in error vs. C. M. Keys and Hugh Mills, a partnership under the firm name of C. M. Keys & Company, and Stock Yards Bank, a corporation, and Wat Mayes, Defendants in error, and is omitted from the transcript in this case at the request of attorney for plaintiff in error.

In witness whereof, I hereto set my hand and affix the seal of said court, at Oklahoma City, this 10th day of March, 1911.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

Endorsed on cover: File No. 22,609. Oklahoma Supreme Court. Term No. 264. First National Bank of Vinita, plaintiff in error, vs. C. M. Keys & Hugh Mills, a partnership under the name of C. M. Keys & Company, Stock Yards Bank, and Wat Mayes. Filed April 8th, 1911. File No. 22,609.